IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6992 of 2002
With
SPECIAL CIVIL APPLICATION No. 6996 of 2002
With
SPECIAL CIVIL APPLICATION No. 8680 of 2002
With
SPECIAL CIVIL APPLICATION No. 8972 of 2002
With
SPECIAL CIVIL APPLICATION No. 8974 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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JANI POPATLAL VASANJI - Petitioner(s)
Versus
STATE OF GUJARAT & 7 - Respondent(s)

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Appearance :

Special Civil Application Nos. 6992 of 2002 with 6996 of 2002
MRS DT SHAH for the Petitioner
DELETED for Respondent(s) : 1,
MS M L SHAH, A.G.P. for Respondent No.s 2,3,4,7 and 8.
RULE SERVED for Respondent No. 5,
MR HS MUNSHAW for Respondent No. 6

Special Civil Application Nos. 8680 of 2002
MR DP VORA for the Petitioner
MS M L SHAH, A.G.P. for Respondent No.s 1 and 3.
MS SEJAL MANDAVIA for Respondent No. 2

Special Civil Application Nos. 8972 of 2002 with 8974 of 2002
MR DP VORA for the Petitioner
MS M L SHAH, A.G.P. for Respondent No.s 1 and 3.
MR HS MUNSHAW for Respondent No. 2

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 09/03/2006

ORAL JUDGMENT

1. In this group of petitions, since common questions of law arise, despite minor factual differences, they are heard together and are being disposed of by this common judgment.

2. The petitioners in this group of petitions are claiming pensionary benefits from the State Government on the basis of the entire service rendered by them including service rendered in Sarvodaya scheme prior to their absorption permanently in the Panchayat service.

3. In Special Civil Application No. 6992 of 2002, the petitioner was appointed as Accountant in the Sarvodaya Scheme on 01.06.1958. The Sarvodaya scheme was to be closed down which gave rise to possibility of termination of the service of the petitioner and other similarly situated employees. The issue reached up to High Court and compromise was entered into between the parties. Existing employees of the Sarvodaya Scheme were agreed to be included in the Panchayat establishment as ex-cadre employees. Accordingly, on or around 01.09.1981, the

petitioner herein was allocated to Junagadh District Panchayat as an employee in ex-cadre service. On 15.03.1988, an order was passed absorbing the petitioner as permanent Panchayat servant on the post of Junior Clerk in the pay scale of Rs. 950-1500. He was absorbed with effect from 01.04.1988. The petitioner retired after crossing the age of superannuation on 30.09.1995. From July, 1995 onwards the petitioner made representations to the authorities seeking pensionary benefits counting his entire length of service right from 01.06.1958 till 30.09.1995.

3.1 The petitioner of Special Civil Application No. 6996 of 2002 was appointed in the Sarvodaya Scheme as a Kadi Worker on 01.08.1961. He was allocated to Panchayat service as an ex-cadre employee in September, 1981. By order dated 15.03.1988, he was permanently absorbed in the Panchayat service with effect from 01.04.1988 in the pay scale of Rs. 950-1500. Having crossed the age of superannuation, he retired with effect from 31.03.2000. He also seeks pensionary benefits on the basis of entire length of service from 01.08.1961 till 31.03.2000. It may be noted that since he had put in more than ten years of permanent service prior to his superannuation, he is

receiving pension on the basis of length of service reckoned from 01.04.1988 till 31.03.2000. His prayer however is that his pensionary benefits should be calculated on the basis of entire length of service starting from 01.08.1961.

3.2 The petitioner in Special Civil Application No. 8680 of 2002 was appointed in the Sarvodaya Scheme as an Accountant on 01.07.1972. He was allocated to Panchayat service as an ex-cadre employee from 01.09.1981. He was absorbed permanently in the Panchayat set-up with effect from 01.04.1987 on the post of Junior Clerk. He superannuated with effect from 31.08.2000. He seeks that his pensionary benefits be considered on the basis of his total length of service from 01.07.1972 to 31.08.2000.

3.4 The petitioner of Special Civil Application No. 8972 of 2002 was appointed as a Assistant Worker in the Sarvodaya Scheme on 01.07.1964. He was allocated to Panchayat service as an ex-cadre employee on 01.09.1981. on the post of Agricultural Sayojak carrying pay scale equivalent to that of Accountant. He was permanently absorbed as a Junior Clerk with effect from 01.04.1987. in the Panchayat establishment. He retired on

superannuation with effect from 01.01.2001. He also seeks pensionary benefits on the basis of entire length of service from 01.07.1964 till 01.01.2001.

3.5 The petitioner of Special Civil Application No. 8974 of 2002 was appointed as Deputy Sayojak in the Sarvodaya Scheme on 01.07.1978. He was allocated to Panchayat service as an ex-cadre employee on 01.09.1981. He was absorbed as a Junior Clerk in the Panchayat service with effect from 01.04.1987. He retired on superannuation with effect from 31.03.2001. He seeks that his entire length of service from 01.07.1978 till 31.03.2001 be counted for pensionary benefits.

4. It can thus be seen that the main prayer made by all the petitioners is common. The petitioners contend that the service rendered by them initially in the Sarvodaya Scheme and thereafter with the District Panchayat prior to their permanent absorption in the year 1988 should also be counted towards calculating pensionary benefits of the petitioners. In the nutshell, therefore, the case of the petitioners is that entire length of service rendered by them right from their initial appointment in Sarvodaya scheme should be counted as pensionable

service.

5. Learned Advocates for the petitioners submitted that issues arising in the present petitions are no longer *res integra*. It is submitted that learned Single Judge of this Court in the case of Prabhudas R. Nimavat v. State of Gujarat rendered in Special Civil Application No. 1696 of 1996 on 16.10.2001, has concluded the controversy between the parties. Learned Advocates pointed out that the learned Single Judge of this Court under identical circumstances found that the petitioners therein are entitled to count their past service prior to their permanent absorption by the District Panchayat for the purpose of pensionary benefits. Learned Single Judge of this Court however turned down the request of the petitioners to award interest on the delayed payment of pensionary benefits. The observations and directions of learned Single Judge may be reproduced at this stage as under :

> “....The Government Resolution dated 15.12.1987 annexure – J and other orders rejecting the request to grant pensionary benefit are hereby quashed and set aside qua all the three present petitioners and shall not have binding effect on the present petitioners. The State is directed to consider the services rendered by present petitioners from their initial date of appointment when they were absorbed

> in the Panchayat cadre i.e. From the year 1980-81 till the date of retirement or otherwise for pensionary benefits as continuous service. Further it is observed that this period should be treated to grant pensionary benefit only and they will not be entitled to claim any cash or other financial benefit. I am told that the present petitioner were given other benefits like leave etc. for their earlier services with Sarvodaya Scheme.
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> 8. Rule is made absolute to above extent. Respondent-State is directed to calculate the pensionary benefit of the present petitioner within four months and should see that the arrears are cleared within six months from the date of the receipt of writ. The State is further directed that they get the pensionary benefits regularly immediately after the payment of arrears. The request to award interest by the learned Counsel for the petitioners is not accepted in view of the fact that this Court has allowed the petition exercising discretion in favour of the old employee in light of the Government Resolution issued in the year 1988 in favour of the employees serving in the education cadre of Sarvodaya Scheme visavis other policy Resolution passed in recent years. Direct service is permitted."

5.1 Learned Advocates appearing for the petitioners further pointed out that the decision of the learned Single Judge in the case of Prabhudas R. Nimavat v. State of Gujarat (supra) has achieved finality. No appeal has been carried against the said decision by the State Government. In fact subsequently two more decisions have been rendered by this Court following the decision in the case of Prabhudas R. Nimavat v. State of Gujarat (supra). It is pointed out that by order dated 19.04.2004 passed in Special Civil Application No. 14642 of 2003 in the

case of Bhikheshkumar Ramdas Sadhu v. State of Gujarat, the learned Single Judge has given similar directions under identical circumstances. Learned Advocates for the petitioners further point out yet another decision of this Court dated 17.10.2003 passed in Special Civil Application No. 6136 of 1994 wherein similar directions have been issued under similar circumstances. They further point out that none of these decisions have been carried in appeal. In fact the State Government has released the benefits to the concerned petitioners. They, therefore, seek parity with other employees whose cases have been already decided by this Court and the government has already released the pensionary benefits.

6. On the other hand Ms. Shah, learned Assistant Government Pleader appearing for the State Government opposed the petitions. She submitted that it was only by way of compromise that the petitioners, who would have otherwise rendered jobless upon winding of Sarvodaya Scheme, were absorbed in the District Panchayat establishment. She submitted that their appointments and their subsequent permanent absorption in the Panchayat service clearly envisaged that such appointments will be fresh appointments. They are not entitled to receive any

benefit of their past service. Their claim for counting previous service for the purpose of pensionary benefits therefore, is not justified. She however conceded that under similar circumstances this Court had rendered decisions which have not been carried in appeal.

7. In view of the above situation I find that it is not open for me to examine the legal issues arising in the present petitions as urged by the learned Assistant Government Pleader. By judicial discipline I am bound by the view of coordinate bench. There are no factual differences pointed out. It is the case of the State Government that the decisions rendered by other benches under similar situation are not appealed. In that view of the matter, respectfully following the decision of this Court in the case of **Prabhudas R. Nimavat v. State of Gujarat (supra)** and subsequent decisions, I find that the prayer of the petitioners for being granted their pensionary benefits counting the entire length of service from their inception has to be accepted. I find that the petitioners have made out a case for counting the entire length of service from their initial appointed date in Sarvodaya Scheme till their superannuation from the Panchayat service for the purpose of pensionary benefits.

In the case of those petitioners who are not receiving any pension since as per the stand of the respondents they had not rendered sufficient length of service to qualify for receiving pension, the respondents shall after calculating the entire length of service as directed hereinabove for the purpose of pensionary benefits, calculate and release all their pensionory benefits.

8. In case of such employees who are receiving pensionary benefits on the basis of truncated services, their pensionary benefits will be revised as per the directions hereinabove.

9. The above exercise shall be completed within a period of two months from the date of receipt of a copy of this order. Arrears be paid within a further period of two months thereafter.

10. Since the petitioners have agitated their grievances after retirement and had not made any grievance earlier at the time when they were being absorbed in the Panchayat service and as held by this Court in the case of **Prabhudas R. Nimavat v. State of Gujarat (supra)**, I

find that the petitioners are not entitled to receive interest on the pensionary benefits to be paid under this order.

11. Learned Advocate Shri Vora urged before this Court that the petitioners in Special Civil Application No. 8680 of 2002, Special Civil Application No. 8972 of 2002 and Special Civil Application No. 8974 of 2002 were absorbed in the Panchayat service in the year 1987 on the post lower than the post held by them till then. He submitted that such reversion should be set aside and petitioners should receive pensionary benefits and other consequential benefits on the basis of setting aside of the reversion. I am afraid said request cannot be accepted. Firstly, the petitioners accepted their absorption in the year 1987 with full consciousness that they are being absorbed on the post lower than what they held till then. They made no grievance about the same for years together. Therefore, on the basis of delay, latches and acquiescence the petitioners cannot be permitted to reopen such issues at this stage. Additionally, I find that the prayer of the petitioners cannot be accepted without full particulars about the availability of the post in Panchayat set-up at the

relevant time. Any directions at this stage without fully appreciating the availability of the post in Panchayat set up would go counter to the settled legal position that there cannot be any absorption without availability of post. On these grounds, the request of the said petitioners for setting aside their so called reversion in the year 1987 cannot be accepted.

12. In the result the petitions are allowed to the above limited extent. Rule is made absolute to the above extent. No order as to costs. Direct service permitted.

[Akil Kureshi, J.]

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